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09/737,004	12/14/2000	Suzanne F. Groemminger	P02977	8548
7590	05/20/2004		EXAMINER	
John E. Thomas Law Department Bausch & Lomb Incorporated One Bausch & Lomb Place Rochester, NY 14604			DELCOTTO, GREGORY R	
			ART UNIT	PAPER NUMBER
			1751	
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 20040516

Application Number: 09/737,004

Filing Date: December 14, 2000

Appellant(s): GROEMMING, SUZANNE F.

MAILED

MAY 20 2004

GROUP 1700

Rita D. Vacca
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 2/2/04.

(1) Real Party in Interest

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

Appellant's brief includes a statement that claims 1-12 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8) *ClaimsAppealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) *Prior Art of Record*

WO00/37049	HU ET AL	6-2000
WO97/43373	HEILER ET AL	11-1997

(10) *Grounds of Rejection*

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-12 are rejected under 35 U.S.C. 103. This rejection is set forth in prior Office Action mailed 4/22/03.

Claims 1-4 and 6-11 are rejected under 35 U.S.C. 103. This rejection is set forth in prior Office Action mailed 4/22/03.

(11) *Response to Argument*

With respect to Hu et al and Heiler et al, Applicant states that neither of these references teach dual cleaning agents for improved removal of lens deposits. Further, Applicant states that Hu et al teach compositions effective in preventing deposits on contact lenses which are no necessarily effective in removing deposits. In response, note that, the Examiner maintains that the compositions as taught and suggested by Hu et al and Heiler et al would have the same cleaning and wetting properties as the compositions recited by the instant claims because both Hu et al and Heiler et al teach compositions containing the same components in the same proportions as recited by the instant claims. Additionally, note that both references specifically teach that the compositions disclosed have advantageous cleansing properties; for example, see page 3, lines 1-15 of Hu et al and page 8, lines 20-30 of Heiler et al. Furthermore, while the preamble of claim 1 states "for cleaning and wetting a contact lens", the Examiner maintains that "for cleaning and wetting a contact lens" is merely an intended use of the composition and is not read as a patentable limitation. Note that, if the body of a claim full and intrinsically sets forth all of the limitations of the claimed invention, and the

preamble merely states, for example, the purpose or intended use of the invention, rather than any distinct definition of any of the claimed invention's limitations, then the preamble is not considered a limitation and is of no significance to claim construction.

Pitney Bowes, Inc. v. Hewlett-Packard Co., 182 F.3d 1298, 1305, 51 USPQ2d 1161, 1165 (Fed. Cir. 1999). See MPEP 2111.02.

With respect to Heiler et al, Applicant states that Heiler et al teach away from the claimed invention because Heiler et al teach that moderately charged polyquaternium polymers are necessary in a composition to achieve an effective contact lens cleaning solution. In response, note that, the instant claims recite "comprising" which would not exclude the presence of moderately charged polyquaternium polymers as taught by Heiler et al.

With respect to instant claims 10-12, Applicant states that these dependent claims are patentably distinct from Hu et al or Heiler et al. In response, note that, both Hu et al and Heiler et al teach the use of buffering agents; See page 9, lines 10-15 of Hu et al and page 10, lines 10-20 of Heiler. With respect to claim 11, the Examiner asserts that the broad teachings of Hu et al or Heiler et al would suggest compositions having the same eye irritation potential as recited by instant claims 11 because Hu et al or Heiler et al suggest contact lens solutions containing the same components in the same proportions as recited by the instant claims.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Gregory R. Del Cotto
Primary Examiner
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GRD
May 17, 2004

Conferees

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